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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/323,765	06/01/1999	MARK D. SCOTT	259.006US1	9616

7590

01/24/2003

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EXAMINER

HAYES, ROBERT CLINTON

ART UNIT

PAPER NUMBER

1647

26

DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**Application No.  
**09/323,765**Applicant(s)  
**Scott et al**Examiner  
**Robert C. Hayes, Ph.D.**Art Unit  
**1647**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
- (a) ☐ it was not timely filed.
  - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
  - (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d) ☐ the submitted fee of \$ \_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$ \_\_\_\_\_.
  - (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
  - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
  - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
  - (c) ☐ the submitted brief fee of \$ \_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$ \_\_\_\_\_.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d) ☒ other: *Appellant did not address all the reasons for noncompliance with 37 CFR 1.192(c)(3)(6).*
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
  - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

*R Hayes*

## DEFECTIVE BRIEF

1. Note MPEP 1206 states that “[t]he appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome *all reasons* for noncompliance of which the appellant was notified”. Applicants failed to correct the following indicated in Paper No: 24:

a) Appellant failed to correct the issues related to 112, 2nd *pp*, and further confuses the brief with contradictory and/or incorrect statements/arguments on pages 4, 9 & 12. 37 CFR 1.192 (c)(3), (6) and now also (7). Note that it is also improper to withdrawal claims from appeal for only some rejections, etc. (e.g., see page 9).

b) Appellant failed to correctly state pending claim numbers for the last three issues on appeal, for the last four issues for grouping of claims, and further confuses the brief with contradictory and/or incorrect statements/arguments on pages 10-11 & 17-23. Previous moot issue #1 still argued on page 9. 37 CFR 1.192 (c)(6) and now also (7) & (8).


2. New issues:

a) The Brief does not contain a correct copy of claim 9, and therefore, also does not contain proper arguments for such. 37 CFR 1.192 (c)(9), (7).

b) The items required under 37 CFR 1.192 (c) are not in the correct order.

c) How claims 5 & 15 stand or fall is confusing and/or contradictory for the rejection under 102(a) by Jeong et al. Again, note claim 8 not addressed.

d) Group of claims for the rejection under 35 U.S.C. 103(a) does not make sense (e.g., especially for claims 2, 9, 28 & 31).

  
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